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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,960	01/28/2004	Toshio Chiba	22040-00027-US	1959

30678 7590 03/16/2007  
CONNOLLY BOVE LODGE & HUTZ LLP  
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WILMINGTON, DE 19899-2207

EXAMINER
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RAJAN, KAI

ART UNIT	PAPER NUMBER
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3736

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/707,960

Applicant(s)

CHIBA ET AL.

Examiner

Kai Rajan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The examiner acknowledges the amendment filed December 27, 2006.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6, 8, 9, 11 – 25, and 26 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al. U.S. PGPub No. 2002/0099412 in view of Scarantino et al. U.S. Patent No. 6,402,689.

In regard to independent claims 1, 2, 15, 22, and new independent claim 28, Fischell et al. teaches all limitations, except Fischell et al. fails to teach a wireless relay. Fischell et al. does teach a wired relay (Fig. 11 – 750 modem). However, Scarantino et al., a reference in an analogous art, teaches the use of a wireless relay (Col. 11, ln 31 – 61, Fig. 3 – 115, Fig 1A & 1B – 75 & 75'). It would have been obvious to one of ordinary skill in the art at the time of invention to substitute the wired relay of Fischell et al. with the wireless relay of Scarantino et al., since Scarantino et al. teaches the interchangeability between wired and wireless communication methods (Col. 11, ln 31 – 61, Fig. 3 – 115).

See previous office action for rejections to original dependent claims.

In regard to new claims 26 and 27, Fischell et al. in view of Scarantino et al. is sufficient to reject the additional limitations (Para 0182, Fig. 11 – 85 modem, 80 physician's workstation).

### ***Response to Arguments***

Applicants arguments filed December 27, 2007 have been fully considered, but they are not fully persuasive. Applicant argues that the prior art does not disclose a wireless relay or a main transceiver. It is the applicant's belief that the prior art does not disclose the invention as presently written. The examiner disagrees.

Although Fischell et al. does not teach the use of a wireless relay, Scarantino et al., a reference in an analogous art, teaches the interchangeability of wireless and wired communication methods for the relay (Col. 11, ln 31 – 61, Fig. 3 – 115, Fig 1A & 1B – 75 & 75').

Fischell et al. teaches the use of a main transceiver (Fig 2 – 85 modem).

Therefore, Fischell et al. rejects the claims as presently cited in view of Scarantino et al.

Applicant further argues that examiner has not established a *prima facie* case of obviousness since Amundson et al. does not "make up for the previously identified limitation of independent claim 2." The examiner disagrees.

Applicant improperly cited the MPEP in the filed amendment. As *fully* stated in the MPEP §2143, "... the prior art reference **(or references when combined)** must teach or suggest all the claim limitations," is satisfied by examiners rejection. Amundson et al. does not teach all

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limitations of independent claim 2. However the combination of Amundson et al. and Fischell et al. appropriated by motivation (Amundson et al. Para. 0014) satisfies all claim limitations of the independent claim 2 as well as depending claims 7 and 10.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is 571-272-3077. The examiner can normally be reached on Monday-Friday 9:00AM to 4:00PM.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KR  
3/15/2007



Max Hindenburg